

1 analysis?

2 A Yes, I do.

3 Q One was DirectTV. Right?

4 A Did you say cable companies?

5 DirectTV is not -

6 Q I corrected myself, I said MVPDs.

7 A I'm sorry.

8 Q DirectTV is one?

9 A Yes, DirectTV.

10 Q Dish?

11 A Dish.

12 Q AT&T?

13 A Verizon, Cox, Insight, RCN, WOW,
14 and Blue Ridge.

15 JUDGE SIPPEL: Where are you
16 looking for those?

17 THE WITNESS: It's from Dr.
18 Singer's report.

19 JUDGE SIPPEL: I've got -- I
20 thought you were looking at Comcast 600.

21 THE WITNESS: No, I went beyond
22 that. I'm sorry.

1 JUDGE SIPPEL: Is it on a document
2 that you have? Is it on 600, or you're just
3 adding these in off your head?

4 THE WITNESS: No, he -- let me try
5 to explain.

6 JUDGE SIPPEL: Thank you.

7 THE WITNESS: Mr. Schmidt asked me
8 which cable companies I looked at that did not
9 carry the NFL Network. And those are the six
10 that are right here, six large ones.

11 JUDGE SIPPEL: Here is what?

12 THE WITNESS: Exhibit 600.

13 JUDGE SIPPEL: All right.

14 THE WITNESS: And then he asked me
15 which -- what were the nine MVPDs that Dr.
16 Singer examined as part of his regression
17 analysis, and I then listed those. So, if you
18 recall Dr. Singer's chart yesterday where he
19 had nine and the price that they pay.

20 JUDGE SIPPEL: I do.

21 THE WITNESS: I just listed those
22 nine. So the overlap would be the top four.

1 JUDGE SIPPEL: Meaning that the
2 top four appear on both lists?

3 THE WITNESS: Yes, precisely.
4 Well, both this chart, and then also Dr.
5 Singer's analysis.

6 MR. SCHMIDT: If I may interrupt,
7 Your Honor?

8 JUDGE SIPPEL: Yes, please.

9 MR. SCHMIDT: I tried to list them
10 here. Hopefully, my handwriting is modestly
11 legible.

12 THE WITNESS: Well, we have to
13 stop for a second, because you've -- in Dr.
14 Singer's analysis, he's gone well below the
15 top ones. So, if I were to do a comparable,
16 you would actually stop right -- well, you'd
17 include Cox -

18 MR. SCHMIDT: I didn't ask you
19 that question. My question is, this is your
20 list of the six cable companies you listed
21 don't carry NFL Network. Right?

22 THE WITNESS: Then, no, that's

1 not.

2 BY MR. SCHMIDT:

3 Q Do you list any other cable
4 companies in that chart that you showed that
5 don't carry the NFL Network?

6 A That's a demonstrative of further
7 information that's in here.

8 Q Let's focus on that one.

9 A Okay.

10 Q You took the six here. Right?

11 A Yes.

12 Q And these are the companies that
13 Dr. Singer used in his regression analysis.
14 Right?

15 A That is correct.

16 Q Okay. And what I'd like you to do
17 is tell me for each one, whether they have
18 substantial competition with Comcast. Does
19 Time Warner?

20 A Let's pause for a second.

21 Substantial competition for what?

22 Q In terms of the markets they

1 serve, the customers they serve.

2 A Okay. Subscribers.

3 Q subscribers.

4 A Okay. I just wanted to make sure
5 we're on the same terms.

6 Q Time Warner?

7 A No. None of the cable companies
8 overlap in terms of the service that they
9 provide.

10 Q So I can scratch out all of these
11 in terms of competition for subscribers.

12 A As I described in my direct
13 testimony, their cable franchise areas abut,
14 so they do not compete directly for
15 subscribers.

16 Q Okay. Let me go through this
17 list. Does DirecTV?

18 A Yes.

19 Q Does Dish?

20 A Yes, it does.

21 Q Does AT&T?

22 A In some of Comcast areas, not all

1 of them.

2 Q Verizon?

3 A In some of Comcast areas, not all

4 of them.

5 Q Does Cox?

6 A No.

7 Q Does Insight?

8 A Insight, I don't know if they over

9 build, at all. I just don't know the answer.

10 Q Okay. I'll take it out. Does

11 WOW?

12 A WOW does, I believe, in Detroit,

13 but I'm not positive about that.

14 Q Blue Ridge?

15 A I don't know if they over build

16 for sure.

17 Q I'll take it out. RCN?

18 A RCN over builds in Philadelphia.

19 Q So none on your list that directly

20 compete for subscribers, and one, two, three,

21 four, five, six on Dr. Singer's list. Is that

22 correct?

1 A Right.

2 Q Okay. Do you have your testimony
3 in front of you?

4 A Yes, I do.

5 Q Would you mind looking, if you
6 would, at page 33 of your testimony?

7 A Sure.

8 Q Do you see at the top, "Price is
9 an important element of the value proposition
10 offered by a network, such as the NFL
11 Network". Do you see that?

12 A Yes, I do.

13 Q "But there are other important
14 components of an MVPDs assessment of any cable
15 network."

16 A Yes, I do.

17 Q You're talking here about what
18 leads a cable company, or an MVPD to decide to
19 carry a network. Right?

20 A Correct.

21 Q And you list some factors. Right?

22 A Yes, I do.

1 Q And the third factor is whether
2 competing MVPDs are carrying the network.

3 Correct? That's what you wrote.

4 A Yes.

5 Q Thank you. Do you remember
6 talking about -- do you remember Bright House
7 being on your list of companies?

8 A Yes, I do.

9 Q Do they directly -- I'm sorry.
10 Let me ask the question differently.

11 Are they responsible for making
12 their own carriage decisions?

13 A My understanding is that they do
14 make their own carriage decisions.

15 Q You do not have an understanding
16 that they're a subsidiary of Time Warner
17 partnership?

18 A My understanding is they were spun
19 out from Time Warner, that they can still
20 purchase programming through Time Warner, and
21 get the benefits of better prices that a
22 larger MVPD gets, and that -- but they can

1 also decide to independently negotiate
2 programming on their own terms. So, it's not
3 any different than, I believe, the way that
4 some of these cooperatives work, like NCTC.

5 Q What about Charter?

6 A Is there a question? I'm sorry?

7 Q No, there was not. Look at page
8 14 of your testimony.

9 A What was that?

10 Q If you look at page 14 of your
11 testimony.

12 JUDGE SIPPEL: Page 14.

13 MR. SCHMIDT: Which has come in as
14 Exhibit 24, Comcast 24. Is that right, Mr.
15 Toscano?

16 MR. TOSCANO: Yes.

17 MR. SCHMIDT: Thank you.

18 BY MR. SCHMIDT:

19 Q You have Footnote 10, which says,
20 "Paul Allen owns a controlling interest in
21 Charter Communications, and the Seattle
22 Seahawks, and NFL team. Thus, even an NFL

1 team owner has decided to carry Versus and the
2 Golf channel on expanded basic, and to not
3 carry the NFL Network at all." Do you see
4 that?

5 A Yes.

6 Q Do you still believe that to be
7 true?

8 A I don't know if it's part of the
9 bankruptcy proceeding, what's happened with
10 Mr. Allen's ownership stake, but throughout
11 the entire period, from 2000 say 5, 6, 7, my
12 understanding, or at some -- Charter
13 originally carried the programming, and then
14 dropped it. And since that time, they decided
15 they were not carrying it.

16 Q Okay. So, at one point they did
17 the carry the NFL Network. Right?

18 A That is correct.

19 Q How much credit did you give them
20 in that table you had for originally carrying
21 the NFL Network?

22 A My understanding is they dropped

1 it, according to the documents, because of the
2 combination of the high price, and high
3 carriage targets that they had to reach.

4 Q My question is, how much credit
5 did you give them?

6 A I didn't give them any credit,
7 because I was looking at it for 2008.

8 Q And you understand they're in
9 bankruptcy in 2008. Right?

10 A But I fully expect them to still
11 be profit maximizing.

12 Q My question is, do you understand
13 that they were in bankruptcy in 2008?

14 A Yes.

15 MR. TOSCANO: Objection.

16 JUDGE SIPPEL: What?

17 THE WITNESS: Actually, I don't
18 know -

19 JUDGE SIPPEL: Wait, wait, wait,
20 wait, wait.

21 MR. SCHMIDT: Mr. Orszag referred
22 to a bankruptcy.

1 JUDGE SIPPEL: Well, I heard the
2 word bankruptcy. Where did I hear -- I think
3 I hear it coming -

4 THE WITNESS: I think you asked me
5 whether I understood that they were in
6 bankruptcy.

7 MR. SCHMIDT: No. I asked you if
8 your footnote was correct, and you started
9 talking about bankruptcy.

10 THE WITNESS: Okay. I'll agree
11 with you, if I did. The transcript will
12 reflect it.

13 MR. SCHMIDT: We can read back the
14 transcript.

15 JUDGE SIPPEL: Well, the
16 transcript -- the way this transcript is
17 going, I don't know what it's going to
18 reflect. Can we back up, and slow down just
19 a little bit?

20 THE WITNESS: Yes, Your Honor.

21 JUDGE SIPPEL: And let's go back
22 to this footnote, and find out what it -- and

1 develop what you're trying to get out of this,
2 please.

3 BY MR. SCHMIDT:

4 Q I'm looking at Footnote 10, where
5 you say, "Even an NFL team owner has decided
6 - the team owner has decided to carry Versus
7 and the Golf channel on expanded basic, and to
8 not carry the NFL Network at all." My first
9 question is, did you know Charter was in
10 bankruptcy?

11 A And the answer is no, I do not.

12 Q Okay.

13 A I note it. Did you say "note"?

14 Q Did you know?

15 A I noted they're in bankruptcy, and
16 I did not note it.

17 JUDGE SIPPEL: Did you know it
18 when you made the footnote? When you prepared
19 the footnote, did you know it?

20 THE WITNESS: I'm not sure if I
21 knew it at that time. I saw it in one of the
22 documents that was on the exhibit list.

1 BY MR. SCHMIDT:

2 Q But what I was really get at is,
3 you've been here throughout all the testimony.
4 Correct?

5 A Yes, I have. Well, not all of it,
6 but the vast majority of it. Q You were here
7 when Mr. Hawkins was testifying, weren't you?

8 A I was.

9 Q Were you here when he said that
10 Mr. Allen had recused himself from any
11 consideration of whether Charter should carry
12 the NFL Network?

13 A I was here for that.

14 Q So, he did not make a decision not
15 to carry the NFL Network. Correct?

16 A A fact that I did not know that he
17 recused himself. What I did know at the time
18 that I wrote that a team owner had a
19 controlling interest in a cable company, and
20 that cable company had decided not to.

21 Q But he recused himself. You now
22 know that. Right?

1 A I now know that.

2 Q Wouldn't you expect a publicly
3 held company, someone in Mr. Allen's position,
4 to recuse himself from a decision regarding
5 the NFL Network?

6 A It's not something that I've sort
7 of considered, so I have no sort of basis for
8 making a conclusion about that.

9 Q Do you recall that there was a
10 period of time when -- let's take a step back,
11 if we could.

12 Do you have an understanding as to
13 what programming on the NFL Network is the
14 most valuable portion of the NFL Network?

15 A To whom, value to whom?

16 Q To MVPDs in terms of what they pay
17 for it?

18 A The eight-game package.

19 Q And that's the eight-game package
20 we've been talking about that Versus actually
21 tried to purchase. Right?

22 A That is correct.

1 Q And just so we have it all clear
2 for the record, Versus is a channel that's
3 owned by Comcast. Right?

4 A That is correct.

5 Q And it used to be called "The
6 Outdoor Life Network".

7 A That is correct.

8 Q When I asked you about your
9 attempt to value how much the NFL Network was
10 worth, the right price for the NFL Network, I
11 asked you if you had considered the amount of
12 money that Comcast had offered to pay the NFL
13 to get the eight-game package on Versus, and
14 your answer was you didn't consider that.
15 Right?

16 A Precisely, because the -- I assume
17 that Mr. Toscano will then ask me why.

18 Q Okay. Do you know how much it
19 was?

20 A Sitting here today, I can't give
21 you a precise estimate, precise number.

22 Q Do you have an understanding that

1 Comcast was willing to pay over [REDACTED] for
2 the eight-game package over five years, plus
3 other interest?

4 A That sounds about right.

5 Q Well, let me -- I don't want you
6 to have to take my word for it. Let me
7 introduce another -- offer you another
8 exhibit, which has been introduced.

9 MR. SCHMIDT: If I may approach,
10 Your Honor?

11 JUDGE SIPPEL: Yes, you may. This
12 would be for -- now, that would be for [REDACTED]
[REDACTED] over five -- [REDACTED] for five years
14 of the eight-game package?

15 THE WITNESS: Yes, sir.

16 JUDGE SIPPEL: Thank you.

17 BY MR. SCHMIDT:

18 Q This is Exhibit 89.

19 JUDGE SIPPEL: It's in or out?

20 MR. SCHMIDT: It's already in,
21 which is an October 14th, 2005 offer from
22 Comcast to the NFL Network, or to the NFL.

1 BY MR. SCHMIDT:

2 Q Have you seen this document
3 before, Mr. Orszag?

4 A I've seen a variety -- it seems
5 like there are probably a hundred of these
6 various presentations, and I've seen a variety
7 of them. Whether I've seen this specific one,
8 I can't tell you sitting here today, but I've
9 seen a variety of these.

10 Q Let's look at, it's actually the
11 third page of this document, but it's number
12 two at the bottom, Bates number 113939. And
13 do you see there's a heading that says,
14 "Economic terms of proposal", at the top of
15 the page numbered 939?

16 A Yes, I do.

17 MR. SCHMIDT: Judge, are you with
18 us?

19 THE WITNESS: Yes, he is.

20 MR. SCHMIDT: It's confusing.

21 BY MR. SCHMIDT:

22 Q Do you see that Comcast is

1 offering a rights fee to the NFL for these
2 eight games?

3 A Well, it actually does say the
4 eight games right here, so I'm assuming that
5 it does -- that it is eight games, if you want
6 me to assume that. But, looking here, I can't
7 -- it doesn't say it right on this page.

8 Q Look at two pages over. Do you
9 see that the rights would cover eight regular
10 and two pre-season games?

11 A I do see that.

12 Q And what's the amount Comcast was
13 willing to pay in the first year for those
14 games?

15 A [REDACTED].

16 Q And it goes up to [REDACTED] by
17 the fifth year?

18 A [REDACTED] if you
19 round, but yes.

20 Q Thank you. And what's the total
21 package of just money that Comcast was willing
22 to pay for these eight games, if only it could

1 get them to run on its Versus channel?

2 A [REDACTED].

3 Q [REDACTED]. Right?

4 A Yes.

5 Q And then do you see that Comcast
6 was willing to give the NFL an equity interest
7 in its channel?

8 A Yes, I do.

9 Q And have you read Mr. Shell's
10 testimony, where he estimates that equity
11 interest to be close to [REDACTED] by itself?

12 A Well, it says it actually right
13 here.

14 Q Okay. So, it's about [REDACTED]
15 so far?

16 A Yes.

17 Q And do you see where in the next
18 line Comcast actually promised to give the NFL
19 better carriage of the NFL Network, if it
20 would surrender these games to Versus, instead
21 of putting them on the NFL Network?

22 A I see that they are offering

1 moving them, or paying them for [REDACTED]
2 incremental Comcast subscribers.

3 Q Now, I think you've offered a view
4 that the diversity of Comcast's programming
5 that covers Versus' programming, that it
6 covers different sports is important. Right?

7 A Well, it's important in the sense
8 that it provides value throughout the year.

9 Q Okay. My question is, are you
10 aware that Comcast told the NFL Network, if
11 you give us these games for [REDACTED], we
12 will make Versus into a football channel. Did
13 you know that?

14 A I've seen documents to that
15 effect, but there have been lots of proposals
16 that were tossed around, and lots of
17 variations of those proposals.

18 Q Let me show you one of those
19 documents.

20 MR. SCHMIDT: This is another
21 document that's been marked in evidence, Your
22 Honor. If I may approach?

1 JUDGE SIPPEL: Please. This is in
2 evidence already?

3 MR. SCHMIDT: Yes, sir. It's
4 Exhibit 90.

5 BY MR. SCHMIDT:

6 Q This is a November 2nd, 2005
7 proposal from Comcast to the NFL?

8 JUDGE SIPPEL: Say that again.

9 MR. SCHMIDT: This is a set of
10 slides that reflects a November 2nd, 2005
11 proposal to the NFL.

12 JUDGE SIPPEL: From Comcast to
13 NFL?

14 MR. SCHMIDT: Yes, sir.

15 BY MR. SCHMIDT:

16 Q For the eight games. Do you see
17 that, Mr. Orszag?

18 A Yes, I do.

19 Q Have you seen this before?

20 A I've seen very similar documents.

21 Again, I don't know if it's precisely this
22 document, or the next variation, because they

1 all start to look alike at some point.

2 Q Look at the fifth page of this
3 document, if you would.

4 A Sure.

5 Q Do you see at the top this slide
6 says, "We reiterate our proposal to the NFL"?

7 A Yes, I do.

8 Q And do you see that it contains
9 the same monetary terms, and the same promise
10 of favorable coverage for the NFL Network
11 without the eight games?

12 A Yes, I do.

13 Q So, again, Comcast is offering
14 [REDACTED] for these games?

15 A Yes, I do.

16 Q By the way, were you -- there was
17 a question yesterday. I think it was asked of
18 Dr. Singer, about how much it would cost
19 Comcast to carry the games at our price over
20 the five-year term of proposed carriage, and
21 a figure was thrown out, [REDACTED]. Was
22 that you that calculated that figure?

1 A No, it was not.

2 Q Because it said it came from one
3 of the experts, and I want to make sure I
4 understand who that -

5 A I actually think it said one of
6 the economists.

7 Q Okay. Did it come from someone on
8 your staff?

9 A I believe it did. It's not
10 something that before it was provided to
11 counsel that I had seen.

12 Q Okay. Fair enough. And you agree
13 with me that [REDACTED] is far below [REDACTED]
[REDACTED]. Right?

15 A Well, they're apples and oranges
16 you're comparing.

17 Q Fair enough. You'll be able to
18 say that. My question is, it's far below,
19 isn't it?

20 A Yes.

21 JUDGE SIPPEL: Well, if it's
22 apples and oranges, let's straighten it out

1 here. Did I understand that number yesterday
2 came from the -- was it [REDACTED] -- on the D2
3 penetration, [REDACTED] times the [REDACTED], 12
4 times 12, and all that kind of stuff?

5 MR. SCHMIDT: I believe it was on
6 expanded basic, and that it was -

7 JUDGE SIPPEL: That's D2. Right?

8 MR. SCHMIDT: No, that's -

9 JUDGE SIPPEL: Oh, that's the one
10 up from D2.

11 MR. SCHMIDT: Yes, sir. Yes, but
12 it was otherwise exactly the math I think Your
13 Honor laid out, [REDACTED] times [REDACTED],
14 times 12, times 5.

15 JUDGE SIPPEL: That's right,
16 because the D2 was -- I think the penetration
17 was around [REDACTED] on the D2.

18 MR. SCHMIDT: Yes. That's
19 correct, Your Honor.

20 JUDGE SIPPEL: All right. And
21 that number was what, [REDACTED] and what [REDACTED]?

22 MR. SCHMIDT: Mr. Orszag, can you